

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

CARINA M. CARPENTER JENKINS,  
THOMAS DENNIS BURNS, SR.,  
J.A.K.B., and  
T.D.B.III,

Plaintiffs,

v.

ANTHONY J. SCOTTA, *et al.*,

Defendants.

Case No. 2:17-cv-11781  
Honorable Laurie J. Michelson  
Magistrate Judge Stephanie Dawkins Davis

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**ORDER REGARDING REPORT AND RECOMMENDATION [67] AND  
DENYING MOTIONS TO DISMISS [57, 58]**

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Before the Court is Magistrate Judge Stephanie Dawkins Davis' Report and Recommendation. (ECF No. 67.) At the conclusion of her September 27, 2018 Report and Recommendation, Magistrate Judge Davis notified the parties that they were required to file any objections within 14 days of service, as provided in Federal Rule of Civil Procedure 72(b)(2) and Eastern District of Michigan Local Rule 72.1(d), and that "[f]ailure to file specific objections constitutes a waiver of any further right of appeal." (ECF No. 67, PageID.753.) It is now October 18, 2018, and no objections have been filed.

The Court finds that the parties' failure to object is a procedural default, waiving review of the Magistrate Judge's findings by this Court. In *United States v. Walters*, 638 F.2d 947, 949–50 (6th Cir. 1981), the Sixth Circuit established a rule of procedural default, holding that "a party shall file objections with the district court or else waive right to appeal." And in *Thomas v. Arn*, 474 U.S. 140, 144 (1985), the Supreme Court explained that the Sixth Circuit's waiver-of-appellate-review rule rested on the assumption "that the failure to object may constitute a

procedural default waiving review even at the district court level.” 474 U.S. at 149; *see also* *Garrison v. Equifax Info. Servs., LLC*, No. 10-13990, 2012 WL 1278044, at \*8 (E.D. Mich. Apr. 16, 2012) (“The Court is not obligated to review the portions of the report to which no objection was made.” (citing *Thomas*, 474 U.S. at 149–52)). The Court further held that this rule violates neither the Federal Magistrates Act nor the Federal Constitution.

The Court therefore finds that the parties have waived further review of the Magistrate Judge’s Report and accepts her recommended disposition. It follows that this Court DENIES Defendants’ motions to dismiss (ECF Nos. 57, 58); insofar as those motions seek dismissal pursuant to Rule 41(b), they are DENIED; insofar as those motions seeks dismissal pursuant to Rule 12, they are DENIED AS MOOT.

SO ORDERED.

s/Laurie J. Michelson  
LAURIE J. MICHELSON  
UNITED STATES DISTRICT JUDGE

Date: October 19, 2018

I hereby certify that a copy of the foregoing document was served upon counsel of record and/or pro se parties on this date, October 19, 2018, by electronic and/or ordinary mail.

s/William Barkholz  
Case Manager